

REMARKS

REJECTION UNDER 35 U.S.C. §103

In the Office Action, at pages 2-3, numbered paragraphs 3-4, claims 1, 3, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19 and 20-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yamauchi et al. (USPN 5,613,109; hereafter "Yamauchi") and Min (USPN 5,175,716; hereafter "Min") in view of de Pommery et al. (USPN 4,450,535; hereafter "de Pommery"). The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested. In the Office Action, at pages 4-5, numbered paragraph 5, claims 2, 4, 5, 7, 8, 13 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yamauchi et al. (USPN 5,613,109; hereafter "Yamauchi") in view of Min (USPN 5,175,716; hereafter "Min") and further in view of de Pommery et al. (USPN 4,450,535; hereafter "de Pommery"). The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

It appears that one source of confusion herein is the terminology "time period." The present invention refers to a sales time period, i.e., a calendar sales time period during which data may be accessed for a predetermined fee. It is similar to consideration of a time period for delivery of a magazine. For example, if a subscription is taken for a magazine for a year, the calendar time period may run from September 30, 2004 through August 31, 2005. Thus, the subscription time period for access to the magazine is the recited one year time period above. Similarly, in the present invention, the terminology "time period" does not refer to a length of time required to download the data from the source (such as the time period recited in Min in col. 4, lines 22-40), but rather refers to the calendar sales "time period," i.e., the calendar sales time period (see line 18 of page 12 through line 14 of page 13) that has been paid for by a subscriber for access to the selected material.

Thus, claims 1-6 and 8-25 have been amended to insert "calendar sales" immediately after the term "requestable," so that the terminology recites "requestable calendar sales period of time." Also, the term "calendar" has been inserted between "present" and "time," so that the terminology recites "present calendar time." Hence, it is now believed that it is clear that the present invention teaches determining whether a "present calendar time" falls within a "requestable calendar sales period of time."

It is respectfully submitted that Yamauchi et al. teaches a data storage medium that "stores two kinds of data in the form of digital data: primary data, or a plurality of element data

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and management data related to the primary data and allows selective addition of the second data group wherever desired in the first data group, such as placing advertisements in desired positions (see previous response). However, Yamauchi et al. does not teach obtaining the use of locked content data by a user for only predetermined requestable calendar sales time periods. As noted by the Examiner, Yamauchi fails to disclose that the judging data (or comparator or generator) is for judging present time that falls within the requestable period of time.

Min teaches converting a number of tracks to be counted to move an optical head to a desired location to a time value required to reach the desired track according to the velocity of the optical head movement. Thus, Min teaches computing a time interval for moving an optical head rather than determining whether a present calendar time falls within a requestable calendar sales time period, as is taught by the present invention.

As noted by the Examiner, Yamauchi and Min fail to teach accessing locked content data. Hence, it is respectfully submitted that Min fails to teach obtaining the use of locked content data by a user for only predetermined requestable calendar sales time periods.

de Pommery et al. teaches access to locked data based on whether a particular user access is allowed. That is, de Pommery et al. fails to teach a calendar sales time-based limitation on user access to data. It is respectfully submitted that limited calendar sales time period access to the data, i.e., access that is specifically limited to a requestable (effective) calendar sales period of time for access to data is significantly different from a user-access limitation to access data which is based on whether a particular user access is allowed in an unlimited time fashion, as is taught by de Pommery et al. The present invention teaches a limited calendar time period access that is not an unlimited access specific to a particular user, but rather is selected to provide only a particular calendar time period access.

It is respectfully submitted that there is no teaching or suggestion of combining Yamauchi et al., Min and/or de Pommery et al. Yamauchi et al. teaches co-ordinating a reproduction of a combination of two sets of data. Min teaches using a speed of an optical head to predict where a track is located that has desired data. de Pommery et al. teaches determining whether a user is authorized to access data in general. None of the three references teaches or suggests combining its invention with any or all of the other two inventions to obtain the use of locked content data by a user for only predetermined requestable calendar sales time periods. Thus, even if the three inventions were combined, the present invention would not be taught.

The Examiner has suggested that it would have been obvious to modify the teachings of

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Yamauchi and Min by adding the content of de Pommery. It is respectfully submitted that Yamauchi was filed in Japan in September, 1993 and in the U.S. in September, 1994. Min was filed in France in April, 1990 and in the U.S. in March, 1991. In contrast, de Pommery was filed in France in September, 1980 and in the U.S. in September 1981. Hence, it is respectfully submitted that, if it had been obvious to combine de Pommery with Yamauchi and/or Min, the inventors of same had ample opportunity and would have seen fit to do so. Since the inventors of the Yamauchi reference and the Min reference did not combine the teachings of de Pommery with their inventions, it is respectfully submitted that it was not obvious to make such a combination.

The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some "teaching, suggestion or reason" to combine cited references. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ2d 1378, 1383 (Fed. Cir. 1997). When the art in question is relatively simple, as is the case here, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. See In re Dembicza, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), limited on other grounds by In re Gartside, 203 F.3d 1305, 53 USPQ2d 1769 (2000) (guarding against falling victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher).

Thus, it is respectfully submitted that there is no teaching or suggestion of combining de Pommery with Yamauchi or Min, and such a combination should not be asserted against the present invention as an argument for obviousness.

Hence, it is respectfully submitted that claims 1-25 are not obvious and are distinguished from the art cited by teaching the requestable calendar sales period of time for accessing locked data only during a predetermined limited calendar time period.

Thus, it is respectfully submitted that claims 1-25 are allowable under 35 U.S.C. § 103 in view of U.S. Patent No. 5,613,109 to Yamauchi et al. ("Yamauchi") in view of U.S. Patent No. 5,175,716 to Min ("Min") and further in view of U.S. Patent No. 4,450,535 to de Pommery et al. (de Pommery). Claim 7 depends from amended claim 2 and is submitted to be allowable for at least the reasons that amended claim 2 is submitted to be allowable. Hence, it is respectfully asserted that, in view of the amendment of claims 1-6 and 8-25, the pending claims 1-25 are in allowable form under 35 U.S.C. § 103.

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CONCLUSION

In accordance with the foregoing, claims 1-6 and 8-25 have been amended. Claims 1-25 are pending and under consideration.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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